IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7208 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDIRABEN C DESAI

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MS KUSUM M SHAH for Petitioner

MR LR POOJARI ASSTT GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 08/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the orders passed by the Deputy Commissioner of Entertainment Tax, Gandhinagar on September 24, 1986,

Annexure : B to the petition, as confirmed by the Commissioner of Entertainment Tax, Government of Gujarat on July 7, 1987, Annexure : C to the petition.

2. The case of the petitioner was that on 5th May, 1986, a surprise checking was done by Entertainment Tax Inspector, Mr. Parmar from the office of the Deputy Commissioner of Entertainment Tax, Gandhinagar Division, Gandhinagar in the afternoon of first show at about 2.15 hours in 'Jaihind Talkies". At that time, a Hindi movie " Achchha-Bura" was being exhibited. A Ticket Register No.17 was checked and it was alleged that on physical verification of the auditorium, some counter-foils were collected by the Inspector from the spectators which were compared with Ticket Register No.17, and it was found that certain irregularities were committed by the petitioner. On physical verification, it was found that duplicate tickets were issued and Government was deprived of entertainment tax in respect of following Tickets :-

Balcony : 03 Tickets
Second Class : 32 Tickets
Third Class : 77 Tickets

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112 Tickets

Thus in all 112 spectators were issued Tickets for which no entertainment tax was paid to the authorities.

3. A show cause notice was issued on 5th June, 1986, Annexure : A to the petition. In Para 2 of the said notice, it was stated as under :-

" Para 2. On minute verification of the Ticket sale Register No.17, outfoils seized from the spectators and the tickets book approved by the Prescribed Officer, following details of the tickets were differed :

Serial number of the tickets sold to the spectators are not compared with the serial numbers of the tickets shown in the sale ticket Register No.17.

Serial no.of the tickets
according to form No.17

Sr.No. Class Admission Serial No. Sr. No. of the

		of the tickets sold	Tickets seized from Spectators.	
1.	Balcony	Rs.4/-	11700	11308 to 11312= 5 to 11702 = 3
2.	Second	Rs. 3/- to 13032 = 32	13000	11019,11029,11023=3
3.	Third	Rs. 2/- to 13076 = 77	13000	8201 to 8207 | 8209 to 8210 |= 35 8212 to 8225 | 8226 to 8240 |

So it appears that the tickets sold to the spectators are duplicate tickets.

4. The petitioner was, therefore, called upon to submit her explanation within 10 days from the receipt of the notice as to why assessment should not be made for evasion of entertainment tax. Written replies were submitted by the petitioner on May 16, June 23 and June 30, 1986 respectively. By an order dt. 24th September, 1986, the Deputy Commissioner found that the petitioner had issued duplicate tickets and deprived the Government of entertainment tax and accordingly, he came to the conclusion that the petitioner was liable to pay tax to the extent of Rs.24,759-95 Ps. in accordance with the provisions of sub-section (1) of Section 9 of the Gujarat Entertainments Tax Act 1977 (hereinafter referred to as the "the Act"). The petitioner was directed to make payment of the said amount. Over and above the payment of tax, the authority also passed an order imposing penalty under sub-section (3) of Section 9 of the Act. Section 9(3) which enables the authority to impose penalty not exceeding one and a half time of the tax assessed or re-assessed. The authority was of the opinion that in the instant case, ends of justice would be met, if penalty to the extent of 100% would be imposed. Accordingly over and above tax of Rs.24,759-95 Ps. penalty of the same amount, i.e.of Rs.24,759-59 Ps. was imposed on her. Moreover, under sub-section (2) of Section 10 of the Act, a direction was issued to the petitioner to pay simple interest at the rate of 24% p.a. on the amount of tax.

5. Being aggrieved by the order passed by the second respondent, a revision application was filed by the petitioner before the State Government which was also dismissed. It appears that the matter came up before Division Bench in accordance with High Court Rules then in force. Notice was issued and ad-interim relief was granted. After hearing the parties, Rule was issued and ad-interim relief was continued on certain terms and conditions. After the High Court Rules 1993 came into force, the matter has been placed before me for final hearing.

6. I have heard Ms. K.M.Shah, learned counsel for the petitioner and Mr. L.R.Poojari, learned Assistant Government Pleader for the respondents.

7. Ms. Shah contended that notice as required by the Gujarat Entertainments Tax Act, 1977 and Gujarat Entertainments Tax Rules 1979, has not been issued and the proceedings were vitiated. She also contended that no material whatsoever has been placed on record by the authority as on what basis, it formed an opinion and there was "reason to believe" why an amount of Rs.24,759-95 Ps. should be recovered from the petitioner. Necessary materials and documents were not supplied to the petitioner which prejudicially affected her. She also submitted that a demand was made for payment of interest, not only on the amount of tax but also on penalty which is not contrary to law as the Act does not contemplate interest on penalty. Ms. Shah, therefore, submitted that the petition deserves to be allowed and the orders passed by the Dy. Commissioner as well as by the Government are liable to be set aside.

8. Mr. Poojari, learned Assistant Government Pleader, on the other hand, supported the order passed by the authorities. He submitted that in the instant case, it was not necessary to stick to Form No.15 on which reliance was placed by the learned counsel for the petitioner read with Rule 15(2) of the Rules. According to him, in the notice, it was clearly stated that looking to Ticket Register No.17, the ticket numbers mentioned in the said Register, the tickets issued and found, the Dy. Commissioner was of the opinion that duplicate tickets were issued and Government was deprived of entertainment tax. The notice was, therefore, legal and valid. Regarding supply of materials and formation of opinion, he submitted that when a notice was issued on the basis of Ticket Register No.17 and tickets found from the spectators, no prejudice can be said to have been caused to the petitioner and hence, there was no violation of

principles of natural justice or in formation of opinion. Regarding interest, Mr. Poojari submitted that the petitioner is liable to pay interest as per provisions of the Act and no demand contrary to the provisions of law was made by the authorities. He, therefore, submitted that the petition deserves to be dismissed.

9. It may be stated at this stage that according to the petitioner, an amount of Rs.20,000/- has been paid by her. Ms. Shah stated that an amount of Rs.10,000/- was paid by the petitioner before she approached this Court. Initially stay was granted by this Court without any condition, but after hearing the parties, conditions were imposed on 3rd December, 1988, a Division Bench issued Rule and continued ad-interim relief on condition that the petitioner would deposit an amount of Rs.5,000/- within eight weeks from the date of the order and another Rs.5,000/- within two months thereafter. She stated that both the amounts have been paid. Thus, total amount of Rs.20,000/- has been paid by the petitioner. She submitted that the said payment was made without prejudice to the rights and contentions of the petitioner.

10. In the facts and circumstances of the case, in my opinion, the petition deserves to be partly allowed. It is true that the entertainment tax was not paid. The petitioner was liable to pay such tax. Regarding payment of tax, the provision is abundantly clear and entire amount will have to be paid. Similar is the position regarding interest and simple interest on tax at the rate of 24% p.a. will have to be paid under Sec.10 of the Act. Regarding penalty, however, discretion is conferred on the authority and it is subject to two limitations; viz. firstly such penalty can be imposed only after complying with the principles of natural justice and affording an opportunity of hearing to the person concerned; and secondly, it should not exceed one and a half times the amount of tax.

11. A question, however, is as to how a decision can be arrived at by the authority. According to Ms. Shah, Rule 15 of the Rules is clear on the point. It provides how an assessment or reassessment under Sec.9 can be made. The said rule reads as under:-

"Rule 15 : Period within which assessment or re-assessment under Sec.9 may be made.-

(1) The assessment or re-assessment of tax under Sec.9 may be made within a period of three years from the date the tax would have been payable.

(2) Before assessing or re-assessing the tax under sub-rule (1) the Prescribed Officer shall issue a notice to the proprietor in Form 15."

Sub-rule (1) of Rule 15 of the Rules refers to Form 15. The notice will have to be issued by the authority in the Form No. 15. The said Form reads thus:-

Form 15
[See Rule 15(2)]

Form of Notice for Assessment or Re-assessment under Sec.9

To

Whereas, I have reason to believe that payment for admission in respect of entertainment or complimentary ticket for the period for ..... to ..... has escaped assessment to tax (has been assessed at the rate of .....); You are hereby directed to attend at ..... at .....on .....
(Place) (time) (date)
and to show cause as to why the amount of tax payable by you in respect of such entertainments or compliments tickets for the said period should not be assessed to tax (reassesed at the rate of .....). You may also produce or cause to be produced any other evidence for determining the correct amount of the tax payable by you for the said period.

Seal..... Signature .....
Place..... Designation .....
Date .....

* Strike out whichever is not applicable.

11. The contention of Ms.Shah is that when sub-rule (2) of Rule 15 of the Rules states that notice shall be issued to the proprietor in Form 15, the said provision must be complied with in its letter and spirit and if the notice is not issued in Form 15, such notice would be bad. On the other hand, it was submitted by Mr. Poojari that since the authority has taken into account the fact that on the basis of register No.17, calculation made and in the notice it was specified, it would not be necessary to issue notice in the prescribed form which provides for two dates i.e. between ..... and .....as it was made clear to the petitioner in the light of averments made.

12. In my opinion, in the instant case, it is not necessary to express final opinion whether the provision of sub-rule (2) of Rule 15 of the Rules and issuance of notice in Form 15 is directory or mandatory. In the facts and circumstances of the case, it would be appropriate, if a direction is issued to the State Government to issue notice in Form 15 read with Rule 15(2) of the Rules.

13. There is a reason why a notice as required in Form 15 is necessary. The reason being that the notice will have to be issued by the authority for assessment or re-assessment as the case may be, if he has "reason to believe" that there was escape from payment of tax and assessment and/or re-assessment. Merely on the ground of suspicion, no such notice can be issued and he must form an opinion that there is "reason to believe" that there was escape from payment of tax and assessment or re-assessment as required by law. It also provides for a period during which such assessment or re-assessment is required to be made giving an opportunity of hearing to the person concerned who will put forth his defence which will be taken into account by the authority and appropriate order will be passed. Since in the instant case, notice is not issued in the prescribed form, the impugned orders passed by the original authority and revisional authority deserves to be set aside and they are accordingly set aside. However, it is open to the authorities to issue fresh notice in Form 15 in accordance with sub-rule(2) of Rule 15 of the Rules and to take appropriate decision.

14. It is not disputed that the petitioner has paid an amount of Rs.20,000/- (Rs.10,000/- plus Rs.5,000/plus Rs.5,000/-). Obviously the said amount will be adjusted, if the petitioner is found liable to pay any amount towards tax and/or penalty and/or interest. If the

petitioner is not found liable to pay any amount, entire amount will be refunded to the petitioner. Since the proceedings are very old, the authorities will issue notice, if so advised, within a period of eight weeks from the receipt of the writ and the proceedings will be completed as expeditiously as possible, preferably within three months thereafter. As stated above, I am not expressing any opinion on merits of the case, and as and when proceedings will be initiated, the petitioner is at liberty to raise all contentions in accordance with law. Rule made absolute to the aforesaid extent. No order as to costs.

Date: 08-03-2000. (C.K.THAKKER, J.)
ccshah